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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/699,824
Filing Date: November 04, 2003
Appellant(s): HOEFELMEYER ET AL.

Viktor Simkovic
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 7, 2008 appealing from the Office action mailed July 30, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 20040002384 A1	Multerer, Boyd C. et al.	1-2004
US 20020013882 A1	Ko, Jung -wan et al.	01-2002
US 6981251 B1	Kreller; Birgit et al.	12-2005

US 7159008 B1	Wies et al.	01-2007
US 6671729 B1	Gordon; Barry et al.	12-2003
US 20020138594 A1	Rowe, Richard E.	09-2002
US 20040015608 A1	Ellis et al.	1-2004

"Official Notice" is taken that both the concepts and advantages of using VPN are well known and expected in the art as described in claim 7.

"Official Notice" is taken that both the concepts and advantages of providing for an IRC server are well known and expected in the art as discussed in claim 6.

"Official Notice" is taken that both the concepts and advantages of providing the step of removing the OS after loading the new OS is well known and expected in the art as discussed in claim 10.

"Official Notice" is taken that both the concepts and advantages of an OS tuned for communications and peer-to-peer gaming are well known in the art as described in claim 11.

"Official Notice" is taken that both the concepts and advantages of downloading games and software over a network are well known and expected to those in the art as described in claim 16.

"Official Notice" is taken that both the concepts and advantages of providing for advertisements or fee based services over the internet are well known and expected in the art as discussed in claims 27 and 28.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-16 and 18-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Multerer et al. (US 2004/00002384) (hereinafter Multerer) in view of Ko et al. (US 2002/0013882) (hereinafter Ko) in view of Kreller et al. (USPN 6,981,251) (hereinafter Kreller).

1. Referring to claim 1, Multerer discloses a method for establishing a gaming session between a first network device (i.e. computing device 502) that includes an operating system 526 (Figure 14; ¶ 30, 249) and at least a second network device (i.e. remote computing device 548) in a communications network (i.e. LAN/Internet 550,552), the method comprising:

connecting the first network device to the communications network (i.e. sending a request over the network inherently requires connecting to the communications network) (¶ 48); and

establishing a peer-to-peer gaming session with the at least one second network device (i.e. join a game session) (Figure 13; ¶'s 53, 168-169).

Multerer does not explicitly disclose modifying the first network device for the gaming session, the modifying including loading a new operating system. In analogous art, Ko discloses another gaming computer which discloses modifying the device for the

Art Unit: 2446

gaming session by loading a new operating system (Figure 3, ref. S308; ¶ 17, 33). It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko: ¶ 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device as supported by Ko (¶ 11-12).

Multerer-Ko furthermore discloses booting the computer up in the new operating system (Ko: ¶ 40); detecting a hardware configuration of the first network device (i.e. checks the hardware configuration) (Ko: ¶ 36); generating a configuration file based on the detecting (i.e. generate a hardware list containing these devices) (Ko: ¶ 36), and installing network access software using the configuration file (i.e. Ko discloses installing drivers for each device on the user's computer, since Multerer discloses using a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well) (Multerer: e.g. abstract; Ko: ¶ 36-38).

Multerer-Ko do not expressly disclose compiling and installing peering software using the configuration file. In analogous art, Kreller discloses another software installation system which discloses in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device (col. 3, lines 20-31). It would have been obvious to one of ordinary skill in the art to combine the teaching of Kreller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system

Art Unit: 2446

of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

2. Referring to claim 3, Multerer-Ko discloses installing gaming software (Multerer: e.g. abstract; Ko: ¶ 40), However do not disclose using the configuration file to install a particular application. In analogous art, Kreller discloses another software installation system which discloses in response to receiving a hardware list of components installed, an executable application is installed on the hard drive (col. 3, lines 20-31). It would have been obvious to one of ordinary skill in the art to combine the teaching of Kreller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

3. Referring to claim 4, Multerer-Ko discloses determining a video capability (i.e. graphic card) and a disk drive of the first network device (Ko: ¶ 36).

4. Referring to claim 5, Multerer-Ko discloses prior to establishing a peer-to-peer gaming session, connecting to a server (i.e. contacting the match making server to find a game host to contact to) (Multerer: ¶ 43-46).

5. Referring to claim 6, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko does not explicitly state that the server is an

Art Unit: 2446

IRC server, however IRC servers are well known in the networking art. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for IRC servers to connect to are well known in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to include an IRC server connection in order to allow users to connect to an IRC server in order to communicate via a well known protocol to a server and receive data from the server.

6. Referring to claim 7, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko further disclose contacting the server via an encrypted communications channel (Multerer: ¶ 247). Multerer-Ko does not explicitly disclose the communication is done using a VPN, however VPN connections are well known in the art for secure communications between endpoints. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for VPN connections are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to include VPN connections in order to provide an added layer of security between endpoints, which would reduce the likelihood of compromised communications.

7. Referring to claim 8, Multerer-Ko disclose storing information regarding the peer-to-peer gaming session (i.e. store data for various game sessions) (Multerer: ¶ 74).

Art Unit: 2446

8. Referring to claim 9, Multerer-Ko disclose the ability to boot the device up in the operating system or the new operating system (i.e. the user selects which operating system to boot the device up, further the user can determine which OS to boot up in by deciding whether the optical disc is inserted in the disc reader) (Ko: e.g. abstract; ¶ 38).

9. Referring to claim 10, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko do not explicitly disclose removing the operating system after loading the new operating system, however this feature would be well known in the art (i.e. due to incompatibility issues, hard drive space, etc.). By this rationale, "Official Notice" is taken that both the concepts and advantages of removing the old OS after loading the new OS are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to remove the old OS after adding the new OS in order to save space when the user will not be using the old OS, such as a new update, or a migration to a different platform, thereby having more hard drive space for other activities, such as storing data.

10. Referring to claim 11, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko do not explicitly disclose that the second OS is tuned for communications and peer-to-peer gaming, however it is well known that multiple facets of the OS can be adjusted based on the user's needs (i.e. applications to load on boot, thread priorities, overclocking, etc.). By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for tuning the OS for

Art Unit: 2446

communications and peer-to-peer gaming are well known in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to tune the OS for communications and gaming in order to remove unnecessary services not needed for communications and/or gaming, such as word processors, administrative tools, etc, thereby freeing CPU power and memory usage for tasks which are used.

11. Claim 12 is rejected for similar reasons as stated above.

12. Referring to claim 13, Multerer-Ko disclose the OS is an open-source OS (i.e. Linux and UNIX are both open source OS's) (Ko: ¶ 41).

13. Claim 14 is rejected for similar reasons as stated above.

14. Referring to claim 15, Multerer-Ko disclose receiving the gaming package from a DVD (Ko: ¶ 41).

15. Referring to claim 16, Multerer-Ko disclose the invention substantively as described in the claims above. Multerer-Ko do not explicitly disclose the ability to download the gaming package over a network, however downloading games and software over a network is well known to those in the networking art. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for downloading gaming packages over the Internet are well known and expected in the art.

Art Unit: 2446

It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to download the information contained in the optical disk over the network to save the distributor the added cost of burning the optical discs, but rather have one source, and allowing multiple people download this information over the network, thereby reducing cost and increasing availability of the information.

16. Claims 18 and 19 are rejected for similar reasons as stated above.

17. Referring to claim 20, Multerer-Ko discloses the information stored identifies a game being played in the peer-to-peer gaming session (Multerer: ¶ 57-60).

18. Claim 21 is rejected for similar reasons as stated above. Furthermore Multerer discloses connecting to a server to identify possible gaming sessions (i.e. querying the match making server) (¶ 55-60).

19. Referring to claim 22, Multerer-Ko discloses establishing a gaming session in response to a selection to one the identified possible gaming sessions (Multerer: ¶ 56).

20. Claims 23-25 are rejected for similar reasons as stated above.

21. Referring to claim 26, Multerer-Ko disclose the stored information includes information identifying the selected games (i.e. game titles) (Multerer: ¶ 56) and

Art Unit: 2446

information identifying the users associated with the plurality of network devices (i.e. information held in the presence servers) (Multerer: ¶ 53-56, 244).

22. Referring to claims 27 and 28, Multerer-Ko disclose the invention as described in the claims above. Multerer-Ko do not expressly teach providing advertisements or a fee based service to the plurality of devices, however these features are well known in the art (i.e. internet advertising, subscriptions, etc.). By this rationale, “Official Notice” is taken that both the concepts and advantages of providing for advertisements or fee based services over the Internet are well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Multerer-Ko to incorporate advertising or fee based services in order to provide revenue to the providers for said services.

23. Referring to claims 29 and 30, Multerer-Ko disclose the use of geographically distinct servers and a warehouse to house all the geographically distinct servers (i.e. the Office construes the term “geographically distinct server” as a server which is connected via a network to communicate with other servers, such as the servers 412, 414, 420, 424, communicating via private network 408, which are all encompassed by a warehouse, also which can be construed as the secure data center 410) (Figure 13).

24. Claim 31 is rejected for similar reasons as stated above.

(10) Response to Argument

Appellant's arguments (Brief, pages 6-38) have been fully considered and are refuted below.

Appellant argues, in substance, that Multerer, Ko, and Kreller do not disclose or suggest installing network access software and peering software using a configuration file as recited in claim 1 (Brief, pages 7-10). The Examiner disagrees. Appellant must understand that it is the combination of Multerer, Ko, and Kreller that meet the claimed invention. Appellant merely focuses on what the individual references teach and not what the combination teaches. Appellant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As detailed in the Advisory Action dated August 21, 2008, Multerer inherently teaches installing peering software, since otherwise there would be no software to establish a peering session. In order to establish the peering session after the new OS has been installed via configuration files by using the techniques described in Ko and Kreller, one of ordinary skill in the art would clearly understand that the peering software must have been installed before the peer-to-peer session could be established. By this rationale, the rejection should be maintained.

Appellant argues, in substance, that the references do not teach compiling network access software and peering software using a configuration file, as also recited in claim 1 (Brief, pages 10-13). The Examiner disagrees. Again, it is the combination of Multerer, Ko, and Kreller which meet this limitation. Multerer teaches network access and peering software (as described above), and Kreller teaches compiling and installing executable applications based on the hardware listing (see rejections above). The limitation is met by the combination of Multerer's network and peering software and the techniques of compiling and installing executable applications as described in Kreller. One would clearly be motivated to combine these techniques in order to avoid incompatibilities between software applications and installed hardware as outlined above. By this rationale, the rejection is maintained.

Appellant argues against the Examiner's assertion of "Official Notice" with respect to communication using VPN (Brief, pages 13-14). As stated in previous Actions, Appellant has failed to seasonably traverse the Examiner's assertions in accordance with MPEP 2144.03, however, for the sake of the Board, the Examiner submits Gordon et al. (USPN 6,671,729) which clearly teaches a client and a server communicating using VPN is well known in the networking art (col. 1, lines 65-66). By this rationale, the Examiner's assertion is valid and therefore the rejection should be maintained.

Appellant's arguments (Brief, pages 14-21) are essentially the same arguments as presented in pages 7-14 and, for the sake of brevity, the Board is respectfully referred to the above.

Appellant argues against the Examiner's assertion of "Official Notice" that it is well known to download a gaming package from a network (Brief, pages 21-22). As stated in previous Actions, Appellant has failed to seasonably traverse the Examiner's assertions in accordance with MPEP 2144.03, however, for the sake of the Board, the Examiner submits Rowe (US 2002/0138594) which discloses that a remote gaming machine can download an entire game software package over a network (§ 38). This clearly demonstrates that downloading a gaming package over a network is a well known and expected feature within the networking arts and, when combined with the other cited references, clearly meet the claimed limitations. By this rationale, the rejection should be maintained.

Appellant's arguments (Brief, pages 22-29) are essentially the same arguments as presented in pages 7-14 and, for the sake of brevity, the Board is respectfully referred to the above.

Appellant argues against the Examiner's assertion of "Official Notice" that it is well known to provide at least one advertisement to a device based on stored information (Brief, pages 29-30). As stated in previous Actions, Appellant has failed to

seasonably traverse the Examiner's assertions in accordance with MPEP 2144.03, however, for the sake of the Board, the Examiner submits *Ellis et al.* (US 2004/0015608) which teaches sending advertising to a particular game device based on the type/genre during the play of the game (¶ 68). This clearly demonstrates that it is well known to provide advertisements to devices based on the stored information. By this rationale the rejection should be maintained.

Applicant argues against the Examiner's assertion of "Official Notice" of claim 28, however it appears that Appellant has copied the language of claim 27 (discussing the advertisements), instead of the fee-based services (Brief, pages 30-32). As stated in previous Actions, Appellant has failed to seasonably traverse the Examiner's assertions in accordance with MPEP 2144.03, however, for the sake of the Board, the Examiner submits that *Rowe* teaches providing a fee-based service (i.e. purchasing games) based on stored information (i.e. user account information) (¶ 66). This clearly demonstrates that it is well known to provide fee-based services to client devices based on stored information. By this rationale the rejection should be maintained.

Appellant's arguments (Brief, pages 32-38) are essentially the same arguments as presented in pages 7-14 and, for the sake of brevity, the Board is respectfully referred to the above.

Art Unit: 2446

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Joseph E. Avellino/

Primary Examiner, Art Unit 2446

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